

SENATE, No. 342

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

SYNOPSIS

Authorizes DEP rulemaking to prevent backsliding of certain State environmental regulations due to changes in federal law or regulation.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning certain environmental regulations and
2 amending various parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 5 of P.L.1973, c.309 (C.23:2A-5) is amended to read
8 as follows:

9 5. a. The commissioner shall have the power to formulate and
10 promulgate, adopt, amend and repeal rules and regulations,
11 limiting, controlling and prohibiting the taking, possession,
12 transportation, importation, exportation, sale or offer for sale, or
13 shipment of any nongame species or any wildlife on the State list of
14 endangered species, and for the purposes of implementing section 6
15 of P.L.2016, c.6 (C.23:2A-6.1). Such rules and regulations shall be
16 designed to promote the public health, safety and welfare and shall
17 be adopted in accordance with the “Administrative Procedure Act,”
18 P.L.1968, c.410 (C.52:14B-1 et seq.).

19 b. The commissioner is authorized to conduct periodic
20 inspections in order to determine compliance with the rules and
21 regulations adopted pursuant to this section, and, to that end, is
22 authorized to charge and collect fees in an amount sufficient to
23 cover the costs of the inspections and services performed pursuant
24 to P.L.1973, c.309 (C.23:2A-1 et seq.). Such fees shall be devoted
25 entirely and exclusively to carrying out the purposes and provisions
26 of P.L.1973, c.309 (C.23:2A-1 et seq.). Inspection fees shall be
27 established in accordance with a fee schedule adopted by the
28 department as a rule and regulation pursuant to the provisions of the
29 “Administrative Procedure Act.”

30 c. In the event of the federal delisting or a downgrade in the
31 legally protected status of an endangered species which is listed, as
32 of January 1, 2017, as endangered or threatened pursuant to the
33 “Endangered Species Act of 1973,” Pub.L.93-205
34 (16 U.S.C. s. 1533), the commissioner shall, notwithstanding the
35 provisions of the “Administrative Procedure Act,” P.L.1968, c.410
36 (C.52:14B-1 et seq.), immediately upon filing proper notice with
37 the Office of Administrative Law, adopt rules and regulations as the
38 commissioner deems necessary to ensure the protection of that
39 endangered species pursuant to this act. Such rules and regulations
40 shall remain in effect for a period not to exceed 12 months, and
41 shall, thereafter, be amended, adopted, or readopted by the
42 commissioner in accordance with the requirements of the
43 “Administrative Procedure Act.”

44 (cf: P.L.2016, c.6, s.4)

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. Section 8 of P.L.1954, c.212 (C.26:2C-8) is amended to read
2 as follows:

3 8. a. The department shall have power to formulate and
4 promulgate, amend, and repeal codes and rules and regulations
5 preventing, controlling, and prohibiting air pollution throughout the
6 State or in such territories of the State as shall be affected thereby,
7 except as provided in subsection b. of this section; provided,
8 however, that no such code, rule, or regulation and no such
9 amendment or repeal shall be adopted except after public hearing to
10 be held after 30 days' prior notice thereof by public advertisement
11 of the date, time, and place of such hearing, at which opportunity to
12 be heard by the department with respect thereto shall be given to the
13 public; and provided, further, that no such code, rule, or regulation
14 and no such amendment or repeal shall be or become effective until
15 60 days after the adoption thereof as aforesaid. Any person heard
16 at such public hearing shall be given written notice of the
17 determination of the department.

18 All codes, rules and regulations heretofore adopted by the Air
19 Pollution Control Commission shall continue in full force and effect
20 subject to the power of the department to amend and repeal such
21 codes, rules, and regulations as provided by **[this act]** P.L.1954,
22 c.212 (C.26:2C-1 et seq.) .

23 b. Unless otherwise required by federal law, rule, or
24 regulation, no code, regulation, rule, or standard may be adopted
25 by the department that diminishes the efficacy of a hospital or
26 medical disinfectant in killing or inactivating agents of infectious
27 diseases, including, but not limited to, restrictions on the volatile
28 organic compound content or emissions caused by the use of such
29 products. No federal requirement to reduce volatile organic
30 compound content or emissions in general may be construed to
31 permit the department to regulate the volatile organic compounds
32 found in, or released in the use of, a hospital or medical
33 disinfectant, unless the federal law, rule, or regulation establishing
34 the federal requirement specifically requires the reduction of
35 volatile organic compounds found in, or released in the use of,
36 hospital or medical disinfectants.

37 c. In the event of amendments or supplements to the federal
38 Clean Air Act or the federal regulations adopted pursuant thereto
39 that are less stringent than those in effect on January 19, 2017, the
40 department shall, notwithstanding the provisions of the
41 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-
42 1 et seq.), immediately upon filing proper notice with the Office of
43 Administrative Law, adopt such rules and regulations as the
44 commissioner deems necessary to ensure that the rules and
45 regulations adopted pursuant to this section in effect at the time of
46 the federal changes are not weakened. Such rules and regulations
47 shall remain in effect for a period not to exceed 12 months, and

1 shall, thereafter, be amended, adopted, or readopted by the
2 commissioner in accordance with the requirements of the
3 “Administrative Procedure Act.”

4 (cf: P.L.1999, c.100, s.2)

5
6 3. Section 4 of P.L.1977, c.74 (C.58:10A-4) is amended to read
7 as follows:

8 4. The commissioner shall have power to prepare, adopt,
9 amend, repeal, and enforce, pursuant to the "Administrative
10 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), reasonable
11 codes, rules and regulations to prevent, control or abate water
12 pollution and to carry out the intent of **[this act]** P.L.1977, c.74
13 (C.58:10A-1 et seq.), either throughout the State or in certain areas
14 of the State affected by a particular water pollution problem. Such
15 codes, rules and regulations may include, but shall not be limited to,
16 provisions concerning:

17 a. The storage of any liquid or solid pollutant in a manner
18 designed to keep it from entering the waters of the State;

19 b. The prior submission and approval of plans and
20 specifications for the construction or modification of any treatment
21 work or part thereof;

22 c. The classification of the surface and ground waters of the
23 State and the determination of water quality standards for each such
24 classification;

25 d. The limitation of effluents, including toxic effluents as
26 indicated herein;

27 e. The determination of pretreatment standards;

28 f. The establishment of user charges and cost recovery
29 requirements in conformance with the Federal Act;

30 g. The establishment of a civil penalty policy governing the
31 uniform assessment of civil penalties in accordance with section 10
32 of P.L.1977, c.74 (C.58:10A-10).

33 In the event of amendments or supplements to the Federal Act or
34 the federal regulations adopted pursuant thereto that are less
35 stringent than those in effect on January 19, 2017, the commissioner
36 shall, notwithstanding the provisions of the “Administrative
37 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), immediately
38 upon filing proper notice with the Office of Administrative Law,
39 adopt such rules and regulations as the commissioner deems
40 necessary to ensure that the rules and regulations adopted pursuant
41 to this section in effect at the time of the federal changes are not
42 weakened. Such rules and regulations shall remain in effect for a
43 period not to exceed 12 months, and shall, thereafter, be amended,
44 adopted, or readopted by the commissioner in accordance with the
45 requirements of the “Administrative Procedure Act.”

46 (cf: P.L.1990, c.28, s.2)

- 1 4. Section 4 of P.L.1977, c.224 (C.58:12A-4) is amended to
2 read as follows:
- 3 4. a. The commissioner shall prepare, promulgate, and enforce
4 and may amend or repeal:
- 5 (1) State primary drinking water regulations that at any given
6 time shall be no less stringent than national regulations in effect at
7 that time;
- 8 (2) State secondary drinking water regulations; and
- 9 (3) other regulations to protect potable waters, regulate public
10 and nonpublic water systems, and carry out the intent of the
11 provisions of P.L.1977, c.224 (C.58:12A-1 et seq.) in any one or
12 more areas of the State requiring a particular safe drinking water
13 program.
- 14 b. Subject to section 5 of P.L.1977, c.224 (C.58:12A-5), State
15 primary drinking water regulations shall apply to each public water
16 system in the State, except that such regulations shall not apply to a
17 public water system:
- 18 (1) Which consists only of distribution and storage facilities and
19 which does not have any collection and treatment facilities;
- 20 (2) Which obtains all of its water from, but is not owned or
21 operated by, a public water system to which such regulations apply;
- 22 (3) Which does not sell water to any person; and
- 23 (4) Which does not provide water for potable purposes to any
24 carrier which conveys passengers in interstate commerce.
- 25 c. The commissioner shall adopt and implement adequate
26 procedures, promulgate appropriate rules and regulations, and issue
27 such orders as are necessary for the enforcement of State primary
28 drinking water regulations and for the provision of potable water of
29 adequate volume and pressure; such regulations and procedures to
30 include but not be limited to:
- 31 (1) Monitoring and inspection procedures;
- 32 (2) Maintenance of an inventory of public water systems in the
33 State;
- 34 (3) A systematic program for conducting sanitary surveys of
35 public water systems throughout the State or in a part thereof,
36 whenever the commissioner determines that such surveys are
37 necessary or advisable;
- 38 (4) The establishment and maintenance of a program for the
39 certification of laboratories conducting analytic measurements of
40 drinking water contaminants specified in the State primary and
41 secondary drinking water regulations; and the assurance of the
42 availability to the department of laboratory facilities certified by the
43 administrator and capable of performing analytic measurements of
44 all contaminant specified in the State primary and secondary
45 drinking water regulations;

1 (5) The establishment and maintenance of programs concerning
2 plans and specifications for the design, construction and operation
3 of water systems, which programs:

4 (a) require all such plans and specifications to be first approved
5 by the department before any work thereunder shall be commenced;

6 (b) assure that all new public water systems have adequate
7 technical, managerial and financial capacity to comply with the
8 provisions of the "Safe Drinking Water Act," P.L.1977, c.224
9 (C.58:12A-1 et seq.), and all regulations promulgated by the
10 department pursuant to that act prior to approval of such systems to
11 distribute water for potable purposes;

12 (c) assure that all water systems will comply with any rules and
13 regulations of the department; and

14 (d) assure and certify compliance with the State primary
15 drinking water regulations or such requirements of the State
16 secondary drinking water regulations as the commissioner deems
17 applicable, and will deliver water with sufficient quality, volume
18 and pressure to the users of such systems.

19 d. The commissioner shall keep such records and make such
20 reports with respect to the duties, powers and responsibilities of
21 the commissioner under subsections a. and c. of this section as may
22 be required by regulations established by the administrator pursuant
23 to the federal act.

24 e. The commissioner may require any public water system to
25 install, use, and maintain such monitoring equipment and methods,
26 to perform such sampling, to maintain and retain such records of
27 information from monitoring and sampling activities, to submit
28 such reports of monitoring and sampling results, and to provide
29 such other information as **[he]** the commissioner may require to
30 assist in the establishment of regulations under the provisions of
31 P.L.1977, c.224 (C.58:12A-1 et seq.), or to determine compliance or
32 noncompliance with the provisions of P.L.1977, c.224 (C.58:12A-1
33 et seq.) or with regulations promulgated pursuant to the provisions
34 of P.L.1977, c.224 (C.58:12A-1 et seq.).

35 f. The commissioner shall have the right to enter any premises
36 upon presentation of appropriate credentials during regular business
37 hours, in order to test, inspect or sample any feature of a public
38 water system, and in order to inspect, copy or photograph any
39 monitoring equipment or records required to be kept under
40 provisions of P.L.1977, c.224 (C.58:12A-1 et seq.).

41 g. (Deleted by amendment, P.L.1999, c.176).

42 h. In the event of amendments or supplements to the federal act
43 or the federal regulations adopted pursuant thereto that are less
44 stringent than those in effect on January 19, 2017, the commissioner
45 shall, notwithstanding the provisions of the "Administrative
46 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), immediately
47 upon filing proper notice with the Office of Administrative Law,

1 adopt such rules and regulations as the commissioner deems
2 necessary to ensure that the rules and regulations adopted pursuant
3 to this section in effect at the time of the federal changes are not
4 weakened. Such rules and regulations shall remain in effect for a
5 period not to exceed 12 months, and shall, thereafter, be amended,
6 adopted, or readopted by the commissioner in accordance with the
7 requirements of the “Administrative Procedure Act.”
8 (cf: P.L.1999, c.176, s.6)

9
10 5. This act shall take effect immediately.

11
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13 STATEMENT

14
15 This bill would authorize the Department of Environmental
16 Protection (DEP) to maintain, at a minimum, certain federal
17 requirements in effect on January 19, 2017 concerning endangered
18 species, air pollution, water pollution, and safe drinking water.
19 Specifically, this bill would amend “The Endangered and Nongame
20 Species Conservation Act,” “Air Pollution Control Act (1954),” the
21 “Water Pollution Control Act,” and the “Safe Drinking Water Act”
22 to authorize the DEP to take certain rulemaking actions to ensure
23 that New Jersey’s rules and regulations aren’t weakened due to
24 changes in the related federal statutes.

25 This bill is intended ensure that certain environmental
26 regulations in the State are not weakened solely because of actions
27 taken at the federal level. In a state as densely populated as New
28 Jersey, it is important to protect the State’s air, land, and water
29 resources. For decades, New Jersey and its residents have relied on
30 federal laws, including the “Endangered Species Act of 1973,” the
31 “Clean Air Act,” the “Federal Water Pollution Control Act
32 Amendments of 1972,” and the “Safe Drinking Water Act,” and the
33 respective federal implementing regulations, along with
34 corresponding comparable State laws, to help protect New Jersey’s
35 public health, environment, and natural resources. The federal
36 Endangered Species Act of 1973 generally prohibits activities
37 affecting threatened and endangered species listed pursuant to that
38 act unless authorized by a permit from the United States Fish and
39 Wildlife Service or the National Marine Fisheries Service, as
40 appropriate. The federal Clean Air Act regulates the discharge of
41 air pollutants into the atmosphere. The federal Clean Water Act
42 regulates the discharge of pollutants into water. The federal Safe
43 Drinking Water Act establishes drinking water standards for
44 drinking water systems.

45 These federal laws establish standards that serve as the baseline
46 level for environment, natural resources, and public health
47 protection, while authorizing states to adopt more protective

1 measures. However, beginning in 2017, the President and United
2 States Congress have engaged in efforts to weaken these federal
3 laws and the protections they provide. This bill is intended to
4 ensure continued protections for the environment, natural resources,
5 and public health in the State even if these federal laws are
6 weakened, and would retain the protections afforded under the
7 federal laws and implementing regulations in effect on January 19,
8 2017, regardless of actions taken at the federal level to weaken
9 those protections.

10 Specifically, the DEP Commissioner would be authorized,
11 notwithstanding the provisions of the “Administrative Procedure
12 Act,” to immediately upon filing proper notice with the Office of
13 Administrative Law, adopt such rules and regulations as the
14 commissioner deems necessary to ensure the State’s rules and
15 regulations under the abovementioned four statutes are not
16 weakened by changes at the federal level. These rules and
17 regulations would remain in effect for a period not to exceed 12
18 months, and would thereafter be amended, adopted, or readopted by
19 the commissioner in accordance with the requirements of the
20 “Administrative Procedure Act.”

21 This bill is similar to legislation pending in California, as Senate
22 Bill 49, entitled the “California Environmental, Public Health, and
23 Workers Defense Act of 2017.”